

Attorney Docket No.: DC-0153
Inventors: Guyre et al.
Serial No.: 09/817,950
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REMARKS

Claims 1-10 are pending in this application. The Examiner has made a restriction requirement under 35 U.S.C. §121 as follows: Group I, claims 1-14 (Applicants believe that this group is intended by the Examiner to recite claims 1-4), drawn to a method of detecting CD163 with an antibody, classified in Class 435, subclass 7.1; Group II claims 5-6, drawn to a composition comprising CD163;, classified in class 514, subclass 8, class 424, subclasses 184.1 and 198.1; and Group III claims 7-10, drawn to a method of reducing signs and symptoms of inflammation with a composition comprising CD163 classified in Class 424, subclass 184.1 and 198.1.

The Examiner suggests that Groups I and III are different methods with regard to ingredients, method steps, and endpoints. The Examiner further suggests each method would be patentably distinct.

The Examiner suggests that Groups II and III are related as product and process of using, and that the composition of group II can be used for identification of macrophages by FACS analysis after induction of CD163 with a glucocorticoid, in addition to the methods of treating recited.

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The Examiner suggests that this restriction is proper because the claims of Groups I, II and III are distinct and have acquired a separate status in the art because of their recognized divergent subject matter. Applicants respectfully traverse this restriction requirement.

MPEP § 803 sets forth two criteria which must be met for a proper restriction requirement. The first is that the inventions be independent or distinct; the second is that there would be serious burden on the Examiner if the restriction is not required. As evidenced by the instant claims, all of the claims are related to the presence of CD163 in a biological sample. Accordingly, no serious burden would be placed on the Patent Office by including all claims in the examination since a proper search of all classes relating to the presence of CD163 in a biological sample would also reveal any prior art references relating to the other groups.

Accordingly, since this Restriction Requirement fails to meet both criteria as required to be proper under MPEP § 803, reconsideration of this Restriction Requirement and searching and examination of pending claims 1-7 of the instant application are respectfully requested.

However, in an earnest effort to be completely responsive, Applicants elect to prosecute Group I, claims 1-4, with traverse.

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The Examiner has also requested Applicants to elect a single disclosed inflammatory condition to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner suggests that the search for all inflammatory conditions presents an undue burden on the office due to their etiologies and therapeutic endpoint dissimilarities. Applicants respectfully traverse this species election requirement.

At the outset, it is respectfully pointed out that no "*species claims*" are present in the instant application. Further, the suggested generic claim, does not recite such a multiplicity of "*species*" as described in MPEP § 808.01(a) that an unduly extensive and burdensome search is required. Instead, the claims of the instant application are drawn to an inflammatory condition which is defined in the application as meaning a condition inducing an inflammatory response or the presence of inflammatory mediators. Successful treatment of inflammation or an inflammatory condition being indicated by a reduction in the presence of inflammatory mediators such as cytokines. See page 11, line 12 through page 12, line 17. The "*species*" which the Examiner has listed in the Restriction Requirement are merely provided in the specification as examples of possible inflammatory conditions. Thus, Applicants disagree with the Examiner that these are "*species*" as described in

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MPEP § 808.01(a). Reconsideration of this requirement to elect a single species is therefore respectfully requested.

However, in an earnest effort to be completely responsive, Applicants elect infection as the species, with traverse, for the reasons discussed above.

Respectfully submitted,

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